

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The petitioner receives Food Stamps and VHAP benefits. In July of this year, the petitioner asked DCF to assist him with shelter payments and personal expenses. The petitioner lives in a home owned by his parents but must pay the taxes and utilities in order to live there.

3. In support of his application, the petitioner returned a DCF "Training and Exemption Medical Report" form signed by his primary care physician. The form indicated that the petitioner had suffered a stroke a year ago and since that time had experienced increased foot pain which prevented him from prolonged standing. It was the physician's opinion that this condition justified an exemption from employment requirements and would last at least a month at which time a follow-up would be done. He stated that the petitioner was being treated for this condition by a podiatrist and that he could not participate in any job that required standing for prolonged periods of time.

4. DCF concluded that the medical form did not support the petitioner's contention that he was not currently "able-bodied" and denied the application.

5. On August 5, 2004, the petitioner reapplied for General Assistance. At that time he submitted a medical form filled out by his podiatrist in support of his application. That form stated that the petitioner was suffering from bilateral fascitis of long-term duration which prevented him from prolonged standing and heavy lifting. It was his opinion that this condition justified his exemption from training and employment requirements and that he would advise later as to

the duration of the condition. He stated that he was treating the petitioner and that he could not participate in any job that required heavy lifting or standing for long periods of time. Attached to this report was a form showing that the petitioner had been referred for physical therapy for this condition.

6. Based on this information, DCF determined that the petitioner was not "able-bodied" and found him eligible for General Assistance for shelter and personal needs for August, but would not rescind the denial for July.

7. The petitioner appealed the July denial saying that the information supplied on both medical forms was essentially the same.

ORDER

The decision of DCF is reversed.

REASONS

DCF's regulations in the General Assistance program require that a person without dependents and two barriers to employment can only receive assistance if he demonstrates that he is not "able-bodied." W.A.M. § 2600(B). That term is specifically defined in the regulations as follows:

Able-bodied No physical or mental impairment exists which prevents the person from working. A person shall not be considered able-bodied if currently unable to work in any type of employment due to physical or emotional problems that have lasted or presumably will last at least 30 days. This eligibility factor must be verified by a signed statement from a physician of licensed practitioner whose services would be covered under Medicaid were the GA applicant a Medicaid recipient. The Department shall pay the reasonable expense of required medical examinations but may require, and pay for, a second opinion.

W.A.M. § 2601

DCF determined that the petitioner was not "able-bodied" under this definition and thus eligible for GA benefits following his submission of the form by his podiatrist in August of 2004. The form which he submitted from his primary care physician in July of 2004 was substantially the same. DCF has not indicated why one form was considered adequate and the other was not. In that case, it is arbitrary to find based on essentially the same evidence that the petitioner was able-bodied in July but was not in August. This is particularly so since both doctors said the condition had existed for some time. It must be found on the evidence, then, that the petitioner was not "able-bodied" during either July or August of 2004 and should not have been denied under

DCF's own interpretation of its regulations for the earlier month.

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